

When persons sell tangible personal property which they are not otherwise engaged in the business of selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a GIL).

April 8, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 20, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

After talking to an Illinois tax consultant they have given me to the legal department.

Here is my problem; I purchased an aircraft from an Illinois resident. Our state does not require state sales tax if the sale is between two private parties. I moved my aircraft to STATE airport in and registered my aircraft as required. This Aircraft is also registered in Illinois.

I did not fill in all the blanks on the STATE form with the assumption that I live out of state and it would not be necessary, as this information was based for STATE residents.

STATE cheerfully cashed my check and sent my registration card. Shortly after that the STATE Department of Revenue sent me a bill to pay sales tax. I sent a letter explaining that I did not live in the State of STATE and the aircraft was purchased from an Illinois owner. Now there are penalties, interest and sales tax that the STATE wants to collect from me.

I have enclosed all correspondence with the STATE Department of Revenue. Also enclosed is a copy of their statutes pertaining to aircraft. I have highlighted what pertains to private out of state owners who register with the STATE.

If I had purchased the aircraft from a dealer it is understood that sales tax would be applicable. The statutes I have included exempts me from paying STATE sales tax. If I am correct in my exemption from STATE sales tax, would be possible to get a statement from the Illinois Department of Revenue stating my sales tax obligations and that I have fulfilled them and I am not subject to a STATE sales tax?

If the enclosed information is wrong, then a short explanation of how the STATE Department of Revenue can reach across the state line and demand sales tax from a transaction that did not occur in STATE from a person that is not domiciled in the STATE. It would seem a conflict of interest to me as I would like this matter finally put to rest. If you would like to talk to me please feel free to leave me a message with the date and time to call.

We are unable to give you an opinion as to whether or not you owe STATE tax on the airplane that you purchased in Illinois. You must contact the STATE Department of Revenue for such information. The Retailers' Occupation Tax Act imposes a tax upon persons who are engaged in the occupation of selling tangible personal property at retail. See 35 ILCS 120/1 et seq. Please be advised that the occasional sale exemption is available when a non-retailer, after using an item, disposes of it by selling it. Please refer to 86 Ill. Adm. Code 130.110. See also Section 1 of the ROT Act where it states in part as follows:

"The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail...does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act."

If your purchase of the airplane was from a person who does not hold himself out as a retailer of airplanes, then the sale would be considered an occasional sale in Illinois.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.